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JAN 28 2005

OFFICE OF PETITIONS

In re Application of
Michael R. Zielinski et al.
Application No. 10/828,705
Filed: April 21, 2004
Attorney Docket No. 37041.11406

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:
: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
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This is in response to the petition filed under 37 CFR 1.47(a) on December 27, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a). and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on April 21, 2004, without an executed declaration. Accordingly, a Notice to File Missing Parts was mailed June 29, 2004. In response thereof, a declaration naming Michael R. Zielinski and Michael Jon Taylor as joint inventors, signed only by joint inventor Taylor and a four month extension of time were filed with the instant petition. The petition filed December 27, 2004 requests status under 37 CFR 1.47 claiming that joint inventor Zielinski cannot be found or reached after diligent efforts.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1) set forth above.

In regards to item (1), petitioners have not provided sufficient proof that a copy of the

complete application (specification, including claims, drawings, if any, and the declaration) was sent to the non-signing inventor.

A statement made by Nancy Page, employed by the assignee, indicates that a telephone call to Mr. Zielinski went unanswered and further, Ms. Page did not receive a return call from the message left at the last known phone number for Mr. Zielinski. Ms. Page explains that she also mailed, via FEDEX, the declaration to the last known address and that it was returned unopened and marked "return to sender".

The evidence presented is not sufficient to show that Mr. Zielinski cannot be located, since no proof has been presented to that end, rather, the evidence presented is more in line with an argument that the non-signing inventor refuses to cooperate with the filing of the application, though that argument would also fail since it isn't clear that Mr. Zielinski had the benefit of seeing the application.

Petitioners may show proof that a copy of the application was sent or given to the non-signing inventor for review by providing a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

Likewise, before a *bona fide* refusal can be shown, the non-signing inventor must have been given an opportunity to review the application. Therefore, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers. If there is a written refusal, petitioners should submit a copy of that refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

If petitioners would like to renew the argument that Mr. Zielinski cannot be located, petitioners must present a showing that diligent efforts have been made to locate him.¹ The fact that the envelope containing the declaration was returned is not evidence that Mr. Zielinski no longer lives at that address. Petitioners must however provide details, in an affidavit or declaration of facts by a person with first hand knowledge of the details, of the additional efforts to locate Mr. Zielinski such as Internet, e-mail, or telephone directory searches, which have been undertaken to locate him, send or give a copy of the application papers to him, and request that he sign and return the declaration. If repeated attempts to contact Mr. Zielinski by telephone, mail, and e-mail, are unsuccessful, petitioners will have established that he cannot be found despite diligent efforts.

¹MPEP 409.03(d).

If Mr. Zielinski refuses in writing to sign the declaration, petitioners should provide a copy of that written refusal with any renewed petition. If a verbal refusal to sign is made to a person, details should be given in an affidavit or declaration of facts by a person having first hand knowledge of the facts of refusal.

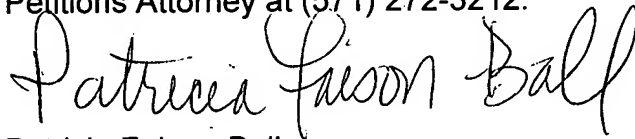
Finally, the petition fee in the amount of \$200.00 has been charged to deposit account no. 10-0460 as authorized in the petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions